

Sher & Blackwell

Suite 900 • 1850 M Street, N.W. • Washington, D.C. 20036

Telephone: 202.463.2500 • Facsimile: 202.463.4950 • www.sherblackwell.com

ATTORNEYS AT LAW

A LIMITED LIABILITY PARTNERSHIP

April 30, 2003

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: MB Docket 02-52 and WC Docket 02-33
Notice of Ex Parte Proceedings

Dear Ms. Dortch:

Submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules is a notice regarding permitted oral *ex parte* presentations in the above captioned proceedings. On April 29, 2003, Dave Baker of EarthLink and Earl Comstock of Sher & Blackwell met with Susan Eid of Chairman Powell's office, Stacey Robinson of Commissioner Abernathy's office, Johanna Mikes of Commissioner Adelstein's office, Jordan Goldstein of Commissioner Copps' office, and Catherine Bohigian of Commissioner Martin's office to discuss EarthLink's concerns in MB Docket 02-52. In the context of discussing the timing of a release of an order in Docket 02-52 it was mentioned in each of the meetings that the timing would likely be on or about the time an order was released in Docket 02-33. The substance of the proceedings in Docket 02-33 was not discussed.

Mr. Baker discussed EarthLink's support for the goals advocated by Coalition of Broadband Users and Innovators (CBUI); namely that Internet users have the right to access any content, use any applications, and attach any non-interfering devices in their use of the Internet. EarthLink pointed out that the goals advocated by CBUI and others (including Amazon.com) can best be achieved in the least regulatory manner through adoption of basic requirement that facility owners must allow multiple (e.g. 3 or more) independent Internet Service Providers (ISPs) on their network. The alternative suggestion, that the Commission should require ISPs to certify that they will abide by the goals outlined by CBUI, would in fact lead the Commission into regulating the very entities – ISPs – that they have heretofore sought not to regulate.

Mr. Baker also pointed out that to date there have been no negotiated agreements for carriage of an unaffiliated ISP on a cable network (including the AOL/Time Warner agreement for carriage on the Comcast network) which have not occurred in the context of regulatory oversight of a merger proceeding. In addition, Mr. Baker and Mr. Comstock briefly discussed points previously raised by EarthLink in its comments and reply comments in Docket 02-52.

Ms. Marlene H. Dortch
April 30, 2003
Page 2 of 2

Please direct any questions to the undersigned.

Cordially,

/s/ Earl W. Comstock

Earl W. Comstock
Counsel for EarthLink, Inc.

cc: Susan Eid
Catherine Bohigian
Jordan Goldstein
Johanna Mikes
Stacey Robinson